APPEAL NO. 022035
FILED SEPTEMBER 27, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held on July 3, 2002. The hearing officer determined that the respondent's (claimant herein) impairment rating (IR) is 41% based upon the report of a designated doctor selected by the Texas Workers' Compensation Commission (Commission) and that the conditions of bulging disc at L5-S1, left rotator cuff tear, left carpal tunnel syndrome and cubital tunnel syndrome are a result of the _____, compensable injury after _____.[1] The appellant (self-insured herein) files a request for review arguing that the hearing officer erred in adopting the IR of the designated doctor and in excluding some exhibits offered by the self-insured. The claimant responds that the decision of the hearing officer should be affirmed.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

The self-insured relies on a peer review report by Dr. C to counter the 41% IR assessed by Dr. W the designated doctor. Dr. C argues that Dr. W did not measure the range of motion (ROM) of the contralateral joint when assessing impairment for the claimant's shoulder and that the straight leg test invalidated some of the impairment Dr. W assessed for lumbar ROM.

Section 408.125(e) provides:

> If the designated doctor is chosen by the commission, the report of the designated doctor shall have presumptive weight, and the commission shall base the impairment rating on that report unless the great weight of the other medical evidence is to the contrary. If the great weight of the medical evidence contradicts the impairment rating contained in the report of the designated doctor chosen by the commission, the commission shall adopt the impairment rating of one of the other doctors.

We have previously discussed the meaning of "the great weight of the other medical evidence" in numerous cases. We have held that it is not just equally balancing the evidence or a preponderance of the evidence that can overcome the presumptive weight given to the designated doctor's report. Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992. We have also held that no other doctor's report, including the report of the treating doctor, is accorded the special, presumptive status accorded to the report of the designated doctor. Texas

[1] At the same time the hearing officer heard this case she also heard evidence concerning an alleged _____, injury, which is the subject of a separate appeal.

Workers' Compensation Commission Appeal No. 92366, decided September 10, 1992; Texas Workers' Compensation Commission Appeal No. 93825, decided October 15, 1993.

Whether the great weight of the other medical evidence was contrary to the opinion of the designated doctor is basically a factual determination. Texas Workers' Compensation Commission Appeal No. 93459, decided July 15, 1993. Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). An appeals-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

Based upon this standard of review, we find no error in the hearing officer's giving presumptive weight to the opinion of the designated doctor. The designated doctor reviewed the criticisms of Dr. C and declined to change his opinion as to the IR. Dr. W indicated in his narrative report that he considered the contralateral joint. See Texas Workers' Compensation Commission Appeal No. 002598, decided December 18, 2000. The hearing officer was free to give greater weight to Dr. W's opinion of the impairment due the claimant's loss of lumbar ROM than to Dr. C's.

As far as the exclusion of the self-insured's exhibits, it was undisputed that the exhibits in question were not timely exchanged. The self-insured contends that one of the exhibits was not required to be exchanged because the document had been sent to the parties by the Commission. We know of no rule that relieves a party of the obligation to timely exchange exhibits for this reason. The self-insured contends it had good cause for not exchanging the other exhibit because it did not receive the document until shortly before the CCH. The claimant argues that the self-insured failed to show due diligence in not obtaining this document earlier. We do not find an abuse of discretion by the hearing officer in failing to admit either exhibit. *See* Texas Workers' Compensation Commission Appeal No. 962395, decided January 7, 1997.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **(a certified self-insured)** and the name and address of its registered agent for service of process is:

FM
(ADDRESS)
(CITY), TEXAS (ZIP CODE).

_____
Gary L. Kilgore
Appeals Judge

CONCUR:

_____
Elaine M. Chaney
Appeals Judge

_____
Margaret L. Turner
Appeals Judge